

INSTRUCTIONS

Motion to Withdraw Guilty Plea and Vacate Conviction

Forms you may need for this process:

- *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction* (CRM1002);
- *Affidavit of Service – Combined* (SOP105).

What You Need to Do

1. Complete the court forms, following all of the steps in these instructions.
2. Schedule a hearing date by contacting Court Administration in the county where the case was filed.
3. File your forms (electronically or at the courthouse).
4. Appear at the hearing. Each step here is described in more detail below.

Important Notices and Resources

The court has forms and instructions, for some types of cases, as a general guide to the court process. These instructions explain the steps in more detail and answer common questions, but are not a full guide to the law. Court employees may be able to give general information on court rules and procedures, but they cannot give legal advice.

Got a question about court forms or instructions?

- Visit www.MNCourts.gov/SelfHelp
- Call the MN Courts Self Help Center at (651) 435-6535

Not sure what to do about a legal issue or need advice?

- Talk with a lawyer
- Visit <http://www.mncourts.gov/Help-Topics/Find-a-Lawyer.aspx>

Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp>. For more information, contact your court administrator or call the Minnesota State Law Library at 651-297-7651.

General Information About the Motion to Withdraw Guilty Plea and Vacate Conviction Packet

The information contained in this document is not intended as legal advice but as a general guide to you to explain the legal process. **If you do not understand any of these procedures, talk to an attorney. Court staff cannot give legal advice.**

You may be able to use this packet **IF**:

- You were charged with an offense, and a guilty plea was entered because:
 - You did not appear or respond; OR
 - You paid all or part of the fine; OR
 - You pled guilty before a judge or hearing officer and a petty misdemeanor sentence was imposed; OR
 - You entered into a continuance for dismissal which was later updated to reflect a guilty plea and petty misdemeanor conviction;

AND

- Now you want the court to reopen your case.

IMPORTANT: It is strongly recommended that you [get legal advice](#). If you do not know if you should use these forms, what you should write in your forms, or want the forms reviewed by an attorney, you should get legal advice.

Step 1

Gather Important Information and Contact Court Administration about a Hearing Date

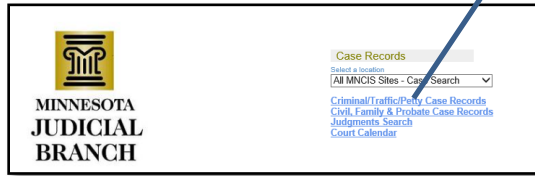
Gather Important Information

You are going to need the following information:

- A court file number (also known as a case number); and
- Name and address of the prosecutor. You may be able to locate the name and phone number of the prosecutor on the “**Register of Actions**,” which is available at the courthouse and online.

To find the “**Register of Actions**” online, go to www.mncourts.gov/publicaccess. Click on “Minnesota District (Trial) Court Case Search.” If you read and accept the terms and conditions of use, you can search court records online.

The screenshot shows a web interface titled "Required Acknowledgement for MPA Remote:". Below the title, it says "Please read and acknowledge these terms before using MPA Remote to access district court records:". There are two numbered sections of text. Section 1, "UNOFFICIAL RECORDS", states that the information is a service and not an official court record, and that the Minnesota Judicial Branch does not certify the data. Section 2, "LIMITED CASE RECORD INFORMATION", states that case records and calendars are displayed for all Minnesota District (Trial) Courts, but the information is limited to case search results, registers of action, civil judgments, and court calendars for publicly accessible district court case records. At the bottom, there is a button that says "I Accept The Above Terms & Conditions".



Criminal/Traffic/Petty Case Records
[Civil, Family & Probate Case Records](#)
[Judgments Search](#)
[Court Calendar](#)

Click on “Criminal/Traffic/Petty Case Records,” where you can then search by case number or your name.

Contact Court Administration

It is important that you check with your local [Court Administration](#) to see how to schedule a hearing for your motion. If you do not schedule a hearing, the court will not do anything with your motion. You will write the hearing date on the **Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction** (see Step 2 below).

Step 2

Fill out the *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction* (CRM1002)

Section A: The “Caption”

A

<p>State of Minnesota</p> <p>County 1</p>	<p style="text-align: right;">District Court</p> <p>Judicial District: _____</p> <p>Court File Number: _____</p> <p>Case Type: <u>Crim/Traf Non-Mand</u></p>
<p>State of Minnesota</p> <p>vs 2</p> <p>Defendant _____</p>	<p>Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction</p>

1. At the top of the page, write:

- The **county** where the case is located;
- The **judicial district** number (each county is located in one of ten [judicial districts](#)); and
- Your **court file number** (this usually starts with a two-digit number, followed by letters and numbers. For example, *15-VB-17-0001*).
- The **case type** has already been filled in for you.

2. Write your name on the line for “Defendant.”

Section B: The Notice of Hearing

3	NOTICE OF HEARING	B
	Notice To Prosecutor: This matter is scheduled for hearing on _____ (date) at _____ (time); at _____ (location).	

3. Fill in the details of the hearing (date, time, location).

Section C: The Motion

4	MOTION	C
	I ask the Court for an order allowing me to withdraw my plea, and vacating my conviction. I should be allowed to withdraw my plea, and the court should vacate my conviction, because: _____	

4. Explain why you are asking to withdraw your guilty plea and to have your conviction vacated.

Section D: The Signature Block / Penalty of Perjury

5	I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.	D											
	<table><tr><td>Dated: _____</td><td>Signature _____</td></tr><tr><td>County and State where signed _____</td><td>Name: _____</td></tr><tr><td></td><td>Address: _____</td></tr><tr><td></td><td>City/State/Zip: _____</td></tr><tr><td></td><td>Telephone: _____</td></tr><tr><td></td><td>E-mail address: _____</td></tr></table>		Dated: _____	Signature _____	County and State where signed _____	Name: _____		Address: _____		City/State/Zip: _____		Telephone: _____	
Dated: _____	Signature _____												
County and State where signed _____	Name: _____												
	Address: _____												
	City/State/Zip: _____												
	Telephone: _____												
	E-mail address: _____												

5. When you sign this form, you are signing under penalty of perjury. Perjury is the crime of intentionally lying or misrepresenting the truth. By signing under penalty of perjury, you are stating that the information in your form is true to the best of your knowledge.

Date and sign. Then write the names of the county and state you are in when you signed it, and print your personal contact information below your signature.

Step 3

Make Copies

You will need to make one copy of the *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction* for the prosecuting authority and for yourself. Be sure to bring your copy with you to court when you go to the hearing.

Next, you have to arrange for the prosecuting authority to be served with a copy of your form.

Step 4

Arrange for Service

You must arrange for the prosecuting authority to receive notice of the hearing and copies of all documents you have prepared for the hearing. This is called "service of process." You must have someone else who is over the age of 18 and not involved in the case serve the prosecutor; **you cannot be the one to serve**. The paperwork can be served personally (handed to someone in the prosecutor's office) or by mail.

NOTE: Papers **cannot** be served on a legal holiday.

To serve the papers personally:

The server (the person giving the documents to the other party) hands to someone in the prosecuting authority's office a copy of the *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction* (and any attachments).

To serve the papers by mail:

Put your address as the return address in the upper left hand corner of the envelope, even though you won't be the person mailing the envelope. The server places a copy of the *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction* (and any attachments) in an envelope addressed to the prosecuting authority. The envelope should be mailed using first class mail. The server may want to take the envelope to the post office to be weighed to make sure they have the right amount of postage.

Step 5

Affidavit of Service (Proving the Prosecuting Authority Was Served)

After the paperwork is served on the prosecuting authority (**not before**) either personally or by mail, the server must fill out the [Affidavit of Service](#) form (SOP105). This form serves as your proof for the court that papers were served on the prosecuting authority.

HOW TO FILL OUT THE AFFIDAVIT OF SERVICE FORM:

You can fill out the top of the form:

State of Minnesota	
County of: <div>Select County ▾</div>	Judicial District: Court File Number: Case Type:
Petitioner / Plaintiff (first, middle, last) and / vs. Respondent / Defendant (first, middle, last)	

Fill in the caption the same as you did for the *Notice of Motion and Motion* (see Step A, above).

The **server** should fill out the rest of the form.

I, <div>1</div> , state that I am at least 18 years of age (Name of person who hand delivered or mailed documents)
having been born on <div>2</div> and that on <div>3</div> , I served the following documents, namely Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction <div>4</div> (Title of Documents hand delivered or mailed)
upon (check one) <input checked="" type="checkbox"/> Petitioner/Plaintiff <div>5</div> <input type="checkbox"/> Respondent/Defendant

In the section shown above, the server needs to fill in five things:

1. Server's name;
2. Server's date of birth (to show that the server is at least 18 years old);
3. The date the server either mailed or hand-delivered the papers;
4. The names of the papers that were served (*Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction*);
5. A check mark or "x" showing which party was served (for this set of forms, the "Petitioner/Plaintiff" box should be checked). The plaintiff (State of Minnesota) is represented by the prosecuting authority, and that is who has to be served.

Next, the server checks *HOW* the other party was served (personal service or service by mail).

If the server **hand-delivered** a copy of the forms to the prosecuting authority, or to an employee in the prosecutor's office, then the server fills out this section of SOP105:

**Personal
Service**

Service was done as follows: (check all that apply)

1

☐ Personal service: By handing a true and correct copy of the documents to

2

The server needs to do two things in this section if the prosecuting authority was **personally served**:

1. Check the box next to the words “Personal service.”
2. Write the name of the person the server gave the papers to. You might consider writing the name of the agency (for example: “Koochiching County Attorney’s Office”).

If the server **mailed** a copy of the papers to the prosecuting authority, the server should fill out this section of SOP105:

**Service
by Mail**

1

☐ Mail service: By mailing a true and correct copy of the documents by first class mail to (name)

2

at his/her last known address at

3

(Street address)

(City)

(State)

(Zip Code)

and depositing the envelope, with sufficient postage, in the U.S. Mail at a postal box located in the

4

City of _____, State of _____ Zip Code _____.

The server needs to do four things in this section if the prosecuting authority was **served by mail**:

1. Check the box next to the words “Mail service.”
2. Write the name of the prosecutor (the name that was put on the envelope).
3. Write the address that the papers were mailed to.
4. Write the city, state, and zip code that the server was in when they mailed the papers.

The server also has to fill out the last section on the form:

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

County and State where signed

Signature _____

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-mail address: _____

The server has to sign the *Affidavit of Service* under penalty of perjury, and then has to fill in the information requested.

After the server signs the *Affidavit of Personal Service* (SOP102), make one copy for your records. The original is filed with the court as part of Step 6 below.

Step 6

File with Court Administration

You will need to file the following forms with Court Administration:

- Original *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction*; and
- Original *Affidavit of Service*.



The forms must be filed before the hearing date, or your hearing may be cancelled. Contact your local court administration to find out how many days before the hearing the forms must be filed.

Step 7

Go to Your Hearing

To prepare for your hearing, it is a good idea to look at the court rules. You can visit a [law library](#) to read the court rules.

You must go to court on the date set for the hearing. It is important to be on time. If you are even a few minutes late, the judicial officer may dismiss your motion.

Bring your copies of the paperwork with you to the hearing. If the prosecuting authority has served you with a responsive motion, be prepared to talk about your response at the hearing. If you are unsure how to prepare for the hearing, or what evidence you should bring, you should [get legal advice](#) before your court date.